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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/617,877	07/11/2003	Marvin Courson	117304.00001	3426

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EXAMINER

KLEBE, GERALD B

ART UNIT	PAPER NUMBER
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3618

DATE MAILED: 04/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/617,877	Applicant(s) COURSON, MARVIN	
	Examiner Gerald B. Klebe	Art Unit 3618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 6, 9-12, 14-15, and 18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

AB Klebe
1 April 05

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>12/27/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Amendment

1. The amendment filed 12/28/2004 under 37 CFR 1.111 has been entered. Claims 1-20 are pending in the application, independent claims 1, 9, 12 and 18 being amended.

Claims Rejections - 35 U.S.C. §102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Everts et al. (US 6345489).

Everts et al. ("Everts") discloses (refer Fig 16) a cart (item 210) suitable for carrying and operating a motorized lawn trimmer having a motor/fuel tank (228), an elongated shaft (236), and a cutting assembly (232) and comprising:

- a. an elongated frame (not separately numbered; best understood from Fig 17, where the frame is taken as the combination of the handles and the structure 212 carrying the wheels and axles) comprising a proximal end (near the handle end) and a distal end (near the cutting assembly end), and having a handle (237), the frame further comprising a debris guard (Fig 16, combination 238 214 and 281) secured to the distal end, and wherein the frame is configured to carry the trimmer during operation of the trimmer; and,
- b. a wheel assembly (combination wheels 216, 218 and axle 222) secured to the frame between the handle (237) and the debris guard (238) (best understood from Fig 17); and,

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c. the debris guard comprising (refer Fig 17) an upper shield portion (238) and a lower shield portion (214), wherein the upper shield portion (238) further comprises an opening through which a portion of the trimmer shaft is housed (refer Fig 16) such that when the trimmer is mounted on the cart, the shaft is secured between the upper (238) and lower (214) shields (as shown in Fig 16) and the cutting assembly (232) of the trimmer is oriented forward of the cart (as shown in Fig 16).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 2-3 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable in view of Everts et al. (US 6345489).

As discussed above, Everts et al. discloses a cart for carrying and operating a motorized lawn trimmer including a motor/fuel tank assembly and having all the features of claim 1 from which claims 2, 3 and 6 each depend.

Regarding the features of claim 2, Everts et al. discloses having a substantially U-shaped mounting device to maintain the motor/fuel tank assembly of the trimmer within the mounting device (taken as the pan portion of the frame element 212 which, as best understood from the embodiment shown in Fig 14 is seen to have a U-shaped section). However, Everts et al.'s U-shaped mounting device is formed integrally with the frame rather than a separate device secured to the frame. But it would have been obvious to one having ordinary skill in the art at the

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time the invention was made to have modified the frame of Everts et al. to accommodate a U-shaped motor/fuel tank mount separately connected to rather than integral with the frame portion 212 since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art (*Nerwin v. Erlichman*, 168 USPQ 177, 179) and making the frame and mount a two-part structure would permit easy change-out of the mount for the motor/fuel tank from the frame in order to more readily accommodate trimmers having different sized motor/fuel tank combinations.

Regarding the features of claim 3, as shown in Fig 16 the lower portion 214 of the debris shield is secured to the distal end of the frame 212; however the upper shield portion (238) is disclosed as being integral with the lower shield portion rather than removably secured thereto. But it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the debris shield of Everts et al. to accommodate a removable upper shield portion rather than being integral with the lower shield portion since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art (*Nerwin v. Erlichman*, 168 USPQ 177, 179) and making the debris shield with a removable upper shield portion would permit less expensive maintenance when the upper shield portion became very worn as a result of debris impacts and needed to be replaced for continued satisfactory use of the trimmer cart in operation.

Regarding the features of claim 6, Everts et al. fails to explicitly disclose the upper debris shield portion as being formed of a substantially transparent material. However, it would have been obvious to one of ordinary skill in the art at the time the instant invention was made to have modified the disclosure of Everts et al. to include a transparent upper debris shield portion

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since it has been held to be within the general skill of a working in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice (*In re Leshin*, 125 USPQ 416) and selecting a clear transparent material to make the upper debris shield from would better enable the operator to see and place the location of the cutting assembly relative to the work surface being cut.

6. Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable in view of Everts et al. (US 6345489).

1) Everts et al. discloses a cart comprising:

(re: claim 9)

a. an elongated frame (Fig 1, combination items 3 and 5) comprising a proximal end and a distal end and having a handle (20), and further comprising a debris guard (30) secured to the distal end; and,

b. a wheel assembly (combination wheels 116, 118 and axle 222) secured to the frame between the handle (237) and the debris guard (combination 238 and 214 and 281); and

c. a substantially U-shaped mounting device (taken as the pan portion of the frame element 212 which, as best understood from the embodiment shown in Fig 14 is seen to have a U-shaped section); and,

(re: claim 10)

wherein the debris guard comprises an upper shield portion and a lower shield portion, wherein the upper shield portion further comprises an opening through which a portion of the trimmer shaft may be housed, such that when the trimmer is mounted onto the cart the shaft is

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secured between the upper and lower shields and the cutting assembly is oriented forward of the cart (best understood from Fig 16).

2) **Regarding the further limitation of claim 9**, the U-shaped device of Everts et al. mounting the motor/fuel tank assembly is made integral with the frame member (212) rather than being a separate motor-mount structure which is secured to the frame.

3) However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the frame of Everts et al. to accommodate a U-shaped motor/fuel tank mount separately connected to rather than integral with the frame portion 212 since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art (*Nerwin v. Erlichman*, 168 USPQ 177, 179) and making the frame and mounting a two-part structure would permit easy change-out of the mount for the motor/fuel tank from the frame in order to more readily accommodate trimmers having different sized motor/fuel tank combinations.

3) **Regarding the limitations of claim 11 wherein the upper shield portion is formed of a substantially transparent material**, Everts et al. discloses the claimed invention except for explicit disclosure that the plastic material of which the upper shield portion is formed is transparent (refer col 4, line 64). However it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the disclosure of Everts et al. by disclosing use of a transparent medium for the manufacture of the upper shield portion since it has been held to be within the general skill of a working in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice (*In re Leshin*, 125 USPQ 416) and plastic materials of sufficient strength are known and selecting a clear

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transparent plastic would better enable the operator to see and place the location of the cutting assembly relative to the work surface being cut.

7. Claims 12 and 14-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Everts et al. (US 6345489) in view of Warfield, III (US 5694752).

As discussed above relative to independent claim 9, Everts et al. discloses a cart suitable for carrying and operating a motorized lawn trimmer having a motor/fuel tank, elongated shaft, and cutting assembly, and comprising further an elongated frame having proximal and distal ends and comprising a debris guard secured to the distal end and a wheel assembly secured to the frame between the proximal end and the debris guard.

Regarding the further limitations of claim 12 having to do with a throttle control assembly secured to the frame and having certain features, Everts et al. lacks explicit disclosure of a throttle control assembly, instead running the motor(engine) at a single speed with a pivotal bail attached to the cart handle and connected by a cable to the throttle control of the trimmer motor (engine) which must be engaged for the engine to start and remain running and is silent regarding the structural details and operation of the assembly.

However, Warfield, III teaches a cart having a frame carrying a lawn trimmer and having a throttle control assembly secured to the cart frame in which the throttle assembly comprises an actuation device, a lever assembly, and a cable having one end secured to the actuation device and opposite end secured to the lever assembly, the lever assembly oriented on the frame such that when the trimmer is mounted onto the frame at least a portion of the lever assembly is positioned near a throttle trigger of the trimmer such that upon actuation of the throttle control assembly of the cart, the lever assembly is moved to contact the throttle trigger of the trimmer

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motor(engine) to activate the trigger and when the actuation device is release the lever is moved away from contact with the throttle trigger of the trimmer motor (engine).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the instant invention was made to have modified the disclosure of Everts et al. to incorporate or to have substituted the throttle controller of Warfield, III in order to permit the operator to control the trimmer motor(engine) speed for different cutting conditions depending on the environment being trimmed/cut since the examiner takes Official Notice of the equivalence of throttle controllers of the type disclosed both in Everts et al. and Warfield, III for their use in the lawn trimmer/lawn mower arts and that the selection of any of these known equivalents to control the trimmer motor (engine) would be within the level of ordinary skill in the art.

Regarding the limitations of claims 14, Everts et al. further discloses a debris guard comprising an upper shield and a lower shield wherein the upper shield further comprises an opening through which a portion of the trimmer shaft may be housed, such that when the trimmer is mounted onto the cart the shaft is secured between the upper and lower shields and the cutting assembly is oriented forward of the cart.

Regarding the limitations of claim 15, Everts et al. discloses a debris shield wherein the lower shield is secured to the distal end of the frame, but has the upper shield integral with rather than removably secured to the lower shield portion. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the debris shield of Everts et al. to accommodate a removable upper shield portion rather than being integral with the lower shield portion since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art (*Nerwin v. Erlichman*, 168

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USPQ 177, 179) and making the debris shield with a removable upper shield portion would permit less expensive maintenance when the upper shield portion became very worn as a result of debris impacts and needed to be replaced for continued satisfactory use of the trimmer cart in operation.

8. Claim 18 is rejected under 35 U.S.C. 102(e) as being unpatentable over Everts et al. (US 6345489) in view of Warfield, III (US 5694752).

As discussed above relative to claims 9 and 12, **the combination of Everts et al. and Warfield, III discloses all the features of claim 18 for a cart suitable for carrying and operating a motorized lawn trimmer having a motor/fuel tank, elongated shaft, and cutting assembly**, the cart comprising an elongate frame having proximal and distal ends, the proximal end configured for handling by an operator or the cart, the frame further comprising a debris guard secured to the distal end, and having a wheel assembly secured to the frame between the proximal end and the debris guard and having a throttle control assembly positioned near a throttle trigger of the trimmer such that upon actuation of the throttle control assembly of the cart the lever assembly is move to contact the throttle trigger to f the trimmer motor and when the actuation device is release the lever is moved away from the throttle trigger and further having a substantially U-shaped mounting device secured to the frame and configured to maintain the motor/fuel tank assembly of the trimmer within the mounting device, and further the debris guard comprising an upper shield portion and a lower shield portion, wherein the upper shield portion further comprises an opening through which a portion of the trimmer shaft may be housed such that when the trimmer is mounted onto the cart the shaft is secured between the upper and lower shields and the cutting assembly of the trimmer is oriented forward of the cart.

Allowable Subject Matter

9. Claims 4-5, 7-8, 13, 16-17, and 19-20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Argument

10. Applicant's arguments with respect to the claims have been considered but are moot in view of the new grounds for rejection.

Prior Art made of Record

11. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure. The prior art of Wollersheim; of Mitchell; of Smith; of Evrikoz; and of See each show features in common with some of the other structures of the inventive concept disclosed in the instant application.

Conclusion

12. Any inquiry concerning this or earlier communication(s) from the examiner should be directed to Gerald B. Klebe at 703-305-0578, fax 703-872-9306; Mon.-Fri., 8:00 AM - 4:30 PM ET, or to Supervisory Patent Examiner Christopher P. Ellis, Art Unit 3618, at 703-308-2560.



Official correspondence should be sent to the following TC 3600 Official Rightfax numbers as follows: Regular correspondence: 703-872-9326; After Finals: 703-872-9327; Customer Service: 703-872-9325.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

gbklebe
gbklebe / Art Unit 3618 / 1 April 2005



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